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09/852,348	05/09/2001	Lutz Richter	A-2829	4692

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EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

**Office Action Summary**

Application No.

09/852,348

Applicant(s)

RICHTER ET AL.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All   b) ☐ Some \*   c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4, 6, 7</u> . | 6) <input type="checkbox"/> Other:  |

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***Election/Restrictions***

1. Claims 15-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 9.

Applicant's election of claims 1-14 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "said drive motor" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "said drive motor" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

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Claim 4 recites the limitation "said drive motor" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said drive motor" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 5 also recites the limitation "a respectively associated said control unit" in lines 3-4. Although a control unit was cited in claim 1, the wording of this limitation is unclear.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4, and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bodie et al. (USPN 5,518,228).

In reference to claim 1, Bodie et al. discloses a gathering stapler, comprising: a plurality of mutually interconnected subassemblies including a stapling carriage (104), a collecting chain (20), a stapling displacement configuration (102), a delivery (110), and an ejector (66, 116); at least two of the subassemblies (20, 66, 116) having a separate and dedicated drive each; controllable motors (118, 122) forming power sources for the dedicated drives (column 7, lines 49-51, 54-55); and control units (150) connected to and operatively associated with each of the motors (118, 122, 154), the control units (150) synchronizing a movement of one of the

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subassemblies with a movement of at least one another of the subassemblies (column 7, lines 38-46, 66-67; column 8, lines 1-10; figures 7 and 12).

Regarding claim 2 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein the stapling carriage (104) and the collecting chain (20) each have a respective drive motor (118, 122, 154) and a control unit (150) connected to the drive motor (118, 122, 154; figures 7 and 12; column 11, lines 49-67; column 12, lines 5-11).

In reference to claim 4 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least three of the subassemblies (20, 104, 116) have a dedicated drive motor (118, 122) and each of the drive motors (118, 122) has a dedicated control unit (150).

With respect to claim 6 and its limitations as stated above, Bodie et al. teaches a gathering stapler which comprises a central control device (120) controlling the control units (15) of the controllable motors (118, 122).

In reference to claim 7 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units (150) of the controllable motors (118, 122) include a device (119) for detecting one of a rotational position and a rotational speed of the motor (122).

Regarding claim 8 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units (150) has a microprocessor (column 9, line 21).

With respect to claim 9 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units (150) has a connection for exchanging data and control signals (figures 12-16b).

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In reference to claim 10 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units (150) has a programmable control device for the respective motor(s) (column 7, lines 35-38; figures 12-16b).

Regarding claim 11 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units has an input/output unit for programmable control (column 7, lines 35-45, 66-67; column 8, lines 1-10; figures 12-16b).

With respect to claim 12 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein at least one of the control units comprises a motor controller and a motor control end stage (figures 12-16b).

In reference to claim 13 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein the device (119) for detecting the rotational position or the rotational speed of the motor (122), in at least one of the controllable motors (122) is connected to the control unit (150).

Regarding claim 14 and its limitations as stated above, Bodie et al. teaches a gathering stapler further comprising a display device (130) and an operating panel (120) connected to the at least one control unit (150; figure 5).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodie et al. (USPN 5,518,228) as applied to claim 1 above, and further in view of Harada et al. (USPN 5,662,318).

With respect to claim 3 and its limitations as stated above, Bodie et al. teaches a gathering stapler wherein the stapling carriage (104) and the collecting chain (20) each have a respective drive motor (118, 122) and a control unit (150) connected to the drive motor (118, 122), and a manually operated stapling displacement configuration (column 5, lines 46-51). Bodie et al. does not disclose a respective drive motor for the stapling displacement configuration. Harada et al. teaches a stapling carriage (18) with a stapling displacement configuration (23, 25) having a respective drive motor (24) and a control unit (column 4, lines 64-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stapling displacement configuration of Bodie et al. with that of Harada et al., since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 199.

Regarding claim 5 Bodie et al. teaches a gathering stapler wherein most of the subassemblies (20, 104, 116, 110) have a dedicated drive motor (118, 122) and each drive motor (118, 122) has a respectively associated control unit (150). The only subassembly of Bodie that does not have a dedicated drive motor is the stapler displacement configuration. Harada et al. teaches a stapling carriage (18) with a stapling displacement configuration (23, 25) having a respective drive motor (24) and a control unit (column 4, lines 64-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the

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stapling displacement configuration of Bodie et al. with that of Harada et al., since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 199.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 9:30 am - 8:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7769 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1789.

Gloria R Weeks  
Examiner  
Art Unit 3721

  
grw

November 5, 2002



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700